

CC: G. Meyers
P. Crotty
J. Petro
M. Edsall

May 3, 2005

New Windsor Planning Board c/o
Mr. James Petro, Chairman
555 Union Avenue
New Windsor, NY 12553

Drew A.
Kartiganer
Architect

Architecture
Interior Design
Planning

Project: Shadowfax Run, Jackson Avenue site

Subject: Presentation to Planning Board and
Scheduling of the Project for Public Hearing

Reference: Highway Superintendent comments.

Dear New Windsor Planning Board & Mr. Petro,

We have been working diligently on a subdivision of lands adjacent to Jackson Avenue owned by the Waugh family for the last 40 plus years. Over the last year, we have had continued opposition to the project from the Highway Superintendent related to the sight distance requirements for the entrance to the subdivision from Jackson Avenue. This is the only issue he has raised to date as detailed in his letter to the Planning Board of February 25, 2004.

Over the weeks following that memo of 2/25/04 we developed an alternate site for the road access acceptable to Mr. Kroll's based on comments detailed in his June 21, 2004 letter to the Planning Board. Unfortunately, we received additional information that the location of the site access preferred by Mr. Kroll was subject to significant periodic flooding that would leave no viable means of entry or egress from the subdivision. The nature of this flood condition is such that it has forced the relocation of the road access to another area of the site because of the serious life, health and safety concerns related to cutting off future residents from ingress and egress to the subdivision from this flooding.

This flood information was established by photographic documentation provided by the Waugh family going back over 40 years. It was subsequently confirmed by a detailed flood study performed by Mike Sandor, PE of MJS Engineering which was provided to the Town of New Windsor. The Flood Study was reviewed by your Planning Board Engineers with acceptance of its findings established in a meeting with Highway Superintendent Kroll present. This was documented in a memo of October 14, 2004 from my office. Further photographic documentation for January 15, 2005 was forwarded to the Planning Board that detailed these same flood conditions in the area of the Highway Superintendent's road proposal. This confirmed findings of the flood study by MJS Engineering and 40 years of the Waugh's photographic history of living on the Site.

555 Blooming Grove Tpk.
New Windsor, NY 12553
phone: 845.562.4499
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In the Town of New Windsor Subdivisions Regulation Under Article III: Design Standards; Subsection 257.20, General Requirements; Item A the following is the first specific design condition for subdivision of lands in the Town of New Windsor;

"A. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace. "

To date Mr. Kroll, the Highway Superintendent, has refuses to acknowledge any of the above technical and photographic information as viable documentation of flooding in this area and continually repeats that he does not believe the area floods. On the basis of this position, he has continued to insist the road be designed in the location he demands despite the clear demonstration of the threat to the future residents of the subdivision.

In addition to the above issue, the road location preferred by the Highway Superintendent is in direct violation of Army Corps of Engineers wet lands provision for this site. Numerous memos and documentation to this effect has been forwarded to the Planning Board and Highway Superintendent by myself and engineers and are part of your file on this project. In essence, the issues related to wetlands crossing are such that an attempt to locate the road where the Highway Superintendent has directed it be placed will not be approved by the Army Corps of engineers.

In summary, there are two reasons the Highway Superintendents preferred road access to this project will not be approved; 1) The life, health and safety of New Windsor residents and 2) the technical requirements of the Army Corp of Engineers. Neither issue can be overcome except by moving the road access for the property further to the south.

The current plan submitted for the Shadow Fax Run subdivision is based on our original proposed highway access onto Jackson Avenue near the Central Hudson Transmission and Power line crossing as re presented to the Planning Board March 16th, 2005. This plan has been revised based on the Planning Board Comments in our presentation. The specific item raised by the Planning Board Chair related to sight distance visibility was reviewed and the decision to move the highway access further to the north was made to resolve this issue. This new location will require rebuilding of a significant portion of Jackson Avenue road way, which we are prepared to include as a part of this project.

As a matter of record, this current plan provides for the following conditions:

1. Meets NYS highway sight distance requirements for a 40 mph road, which is the posted speed limit on Jackson Avenue;
2. Does not place future New Windsor residents at risk of getting cut off from access and egress from their homes as a result of flooding;

3. Are not in violation of the Army Corps of Engineers wet land requirements and can be approved for the subdivision design and construction.

As an additional point of reference, given the Highway Superintendents continual opposition to this project, I have included a memo related to the responsibilities of various New Windsor entities from Jacobowitz & Gubits as the Attorney for the Seller of the Property, the Waugh's. Specifically, it concludes that "the Highway Superintendent's authority is limited to ensuring that the road is constructed to specifications." It also provides specific back up references from the Town of New Windsor codes to support this position.

In short, the Planning Board is the responsible entity to review and approve subdivision proposals. The Highway Superintendent authority is limited to making sure the road meets Town specifications. His formal position is as an advisor to the Planning Board in order to verify that subdivisions meet Town of New Windsor road specification. For the purposes of Preliminary Plan Approval for subdivision from the Town of New Windsor Planning Board the current proposed plan for the Shadow Fax Run subdivision meets those requirements.

Given the revised plan for the Shadowfax Run meets the requirements of Town of New Windsor Subdivision standards; it is ready for a presentation, review and Preliminary Approval by the Planning Board subject to detailing any additional technical requirements for the plan that may arise. This letter is a formal notice that we want this project scheduled for Planning Board Presentation as proposed.

Based on the above information and subject to relevant comments by the Town Engineer and Highway Superintendent on the road access proposed, I expect the project to be on the Agenda for the Planning Board at the earliest time frame for its review and scheduling of a Public Hearing as required for Preliminary Planning Board Approval.

Sincerely yours,

Shadowfax Run Development, LP by Tiger Lily Development by


Drew Kartiganer, Architect

Encls: as noted/ Jacobowitz memo from Finkelstein
cc: Joe Rones, Finkelstein and Partners as Attorney for Developer;
Mike Sandor and Jim Clearwater, MJS Engineering, Engineers for Developer;
Gerry Jacobowitz, Jacobowitz and Gubitz, attorney for the Owners
Mark Edsall, PE, McGoey, Hauser and Edsall, Town Engineers
George Meyers, Town of New Windsor Supervisor
Henry Kroll, Town of New Windsor Highway Superintendent

Saved on: Dell 03, my docs
Saved as: PB letter on Kroll position. 5 2 05. place project on agenda
Saved in: Development Projects; Shadow Fax Run development; LS set up

Finkelstein & PARTNERS

Counselors At Law

A Limited Liability Partnership

(800) 634-1212

REFER TO OUR FILE # 076778

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Andrew Finkelstein, P.C. (NY & NJ)
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Ari Kresch (NY & MI)
Hon. Benjamin A. Gilman
Senior Counsel

July 9, 2004

Drew Kartiganer
555 Blooming Grove Turnpike
New Windsor NY 12553

Re: WAUGH to TIGER LILY DEVELOPMENT, INC.

Dear Mr. Kartiganer:

Enclosed please find a copy of the memo received from Jacobowitz and Gubits which references the 'Superintendent of Highways' position with regard to the road location.

Very truly yours,
FINKELSTEIN & PARTNERS



By: Leslie K. Schofield
Legal Assistant x 2563

/lks

Enclosure

NEWBURGH • ALBANY • SYRACUSE • POUGHKEEPSIE • UTICA • TROY • BINGHAMTON • MIDDLETOWN • NYACK
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ald Jacobowitz

From: Alyse D. Terhune

Sent: Tuesday, June 29, 2004 12:51 PM

To: jbg

Cc: gnj

Ben: I have attached a note on the question you asked me to research on highway superintendents. Briefly, if the town board authorized the planning board to approve (or not) a subdivision, then the power of the highway superintendent to determine location of the road is limited. After reviewing New Windsor code, I have concluded that the town board has so authorized the planning board under their subdivision regulations. Therefore, the highway superintendent's authority is limited to ensuring that the road is constructed to specifications.

Please call me if you have any questions.

Alyse

29/2004

To: Ben Gailey
From: Alyse Terhune
Subj: Highway Superintendent powers
Date: June 29, 2004
cc: Gerald Jacobowitz

Question: To what extent does a town highway superintendent have final say as to the location of a road in a subdivision during review by the planning board?

Town Law § 274 allows a town board to refer matters to a planning board before final action is taken, including the "laying out of streets or highways." Where the town board has authorized such approval or disapproval by the planning board, final action by the officer or body with final authority shall not be taken until the planning board has spoken.

The New Windsor town board has empowered the planning board to approve, approve with modifications or disapprove subdivision applications as part of their subdivision law. Specifically, under Article III, Design Standards, §257-19, New Windsor code authorizes the planning board to ensure that: "[S]treets shall be of sufficient width and suitable grand and suitably located to accommodate prospective traffic and to provide access for emergency equipment to all buildings and recreation areas."

Upon approval by the town planning board, the developer must make an application to the highway superintendent. New York State highway law §172. It is the responsibility of the highway superintendent and the town engineer to see that the road is built to New York State specifications. Those specifications are listed in New Windsor code §252-22 (streets and sidewalks).

If the road is to be dedicated to the town, the highway superintendent and town engineer are responsible for reviewing the construction and recommending whether or not the town should accept the road. New Windsor code §252-18(b). The town board may bring mandamus proceedings against the town superintendent of highways to open and maintain a town roadway if he refuses. Op. State Compt. 79-328.

The case law dealing with this subject is generally quite old (from the late 1800's) with little reference in modern times. I have reviewed legal opinions from the comptroller which typically refer to the inability of the highway superintendent to maintain private roads. As noted above, the comptroller opines that the town board may bring a mandamus action to require the superintendent to open and maintain a town highway. Op. State Compt. 79-328. Here, should it be necessary, the applicant could build the road in the most favorable location and then apply to the town board to force dedication if there is a problem with the highway superintendent. If the planning board and the town engineer agree with the location, it would appear that the highway superintendent's power to refuse to open the road is quite limited.